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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re E.G., a Person Coming Under the Juvenile
Court Law.

FRESNO CO. DEPT. OF CHILDREN &
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

F057644

(Super. Ct. No. 09CEJ300034-1)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jane Cardoza,
Judge.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County
Counsel, for Plaintiff and Respondent.

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Appellant J.G. (Mother) contends there was insufficient evidence to support the juvenile court's removal of her son, E., from her custody. We will affirm.

FACTS AND PROCEDURAL SUMMARY

On January 28, 2009,¹ a police officer responded to an anonymous call regarding the unhealthy conditions in the home of Mother and two-year-old E. The officer examined the apartment and found filthy floors, numerous dirty diapers and bags of garbage, and trash strewn throughout the residence. The kitchen smelled of urine. The nonfunctional refrigerator contained spoiled food and thousands of maggots. Cockroaches were all over the walls and coming in the heating vents. The cupboard shelves were covered in cockroach feces. Dirty dishes and rotten food were on the counters. The rotten food in the refrigerator emitted an overwhelming odor. The water in a fish tank was almost black. Cereal and cockroaches floated in moldy water in the bathroom sink. There was paper in the toilet. The bedroom floors were covered with clothing, empty soda bottles, rotten food, a steak knife, dirty diapers, and a bottle containing liquid and cigarette butts.

Mother told the officer that she and E. had lived in the apartment for about two years and they were moving to a new apartment in the next two days. She explained that the apartment had been dirty for only three or four days. She had not cleaned it because they were moving. She said she was going to throw out the rotten food in the refrigerator and start cleaning. (The officer noted that the condition of the home indicated it had not been cleaned in a long time.)

Mother said that she and E. did not spend a lot of time in the apartment. She worked as an on-call exotic dancer and E. was usually at the apartment of the grandmother or his babysitter, known to Mother only as Melissa.

¹ All dates refer to 2009, unless otherwise noted.

When the social worker asked Mother to gather some clothes for E. and put some shoes and socks on him, Mother said that E.'s clothes were at the grandmother's house. But the grandmother responded that the clothes at her home no longer fit E. Mother said E. had no socks and one of his shoes was lost in his bedroom. The social worker detained E. and placed him in foster care. Mother was cited for child neglect and endangerment.

On January 29, two social workers visited the apartment. Mother and the grandmother appeared to be cleaning. When asked if she understood why E. had been removed the previous evening, Mother stated, "My house was not that bad[. I]t did not have to go that far[. T]hat cop was a dick." She explained that the conditions in her home arose because her refrigerator broke down and because she danced all night and was too tired to pick up. She said to the social worker, "[Sweetheart], I'm on call so when I get called out I get dressed and leave." Sometimes she did not get home until 4:00 a.m.

The grandmother claimed she had not been aware of Mother's living conditions. The grandmother did not babysit E. in Mother's apartment because Mother did not have a big television.

Mother explained that E.'s clothes were all dirty. She fed E. by taking him out for fast food every day. She said E. was smart and had once climbed out the window.

Mother said she was feeling overwhelmed for financial reasons. She explained that she did not know the identity of E.'s father. She went out one night, was drugged, and woke up naked the next day.

A neighbor told the other social worker, who had stepped outside due to the odor, that E. cried as a result of Mother's hitting him, that various men frequented Mother's apartment, and that E. had been found in the street while Mother was in the apartment sleeping. The neighbor suspected Mother also left E. alone in the apartment.

The same day, Mother tested negative for drugs.

On January 30, the Fresno County Department of Children and Family Services (the Department) filed a juvenile dependency petition pursuant to Welfare and Institutions Code section 300, subdivision (b), alleging that Mother had failed to provide adequate care, supervision and protection for E. Specifically, the petition alleged that E. was living in a home that was unsanitary and unsafe due to the filth, dirty diapers, maggots, spoiled food and trash. Furthermore, Mother had an insufficient food supply and no clean clothes for E. The petition further alleged that Mother's "poor judgment and lack of parenting skills pose[d] a substantial risk to the safety of [E.]"

On February 3, an investigator visited Mother's new apartment and observed that it was clean, but sparsely furnished. There was food in the cupboards. When the investigator noted the presence of some cockroaches, Mother said she would speak to the manager about eradicating any cockroaches that might have come to the new apartment with her belongings.

At the March 20 jurisdictional hearing, the juvenile court found the petition's allegation true and took jurisdiction over E.

In the April 1 dispositional report, the social worker wrote that although Mother had changed residences, she was still in need of the court's intervention so the same situation would not arise again. Mother appeared immature and incapable of meeting the needs of E. without court intervention. Her poor judgment and lack of parenting skills posed a substantial risk of safety to E.

Because Mother herself had been a dependent of the juvenile court until 2002 when she reached majority, the Department had extensive documentation of Mother's mental and physical health history. Mother had not been receiving treatment; nor had she participated in any recommended mental health assessment or treatment.

Furthermore, Mother's lifestyle interfered with her ability to care for E. She was on call day and night and often worked late into the night. According to Mother, she was lazy, stressed out and often tired.

The social worker also noted that Mother was very bonded to E. She consistently visited E and was very loving toward him.

On April 8, Mother underwent a mental health assessment. The assessor concluded that Mother exhibited symptoms of “[i]nternal anger, anxiety, tearfulness and difficulty concentrating.” The assessor recommended “individual treatment with [a] private provider to address [the] severity of [Mother’s] symptoms.”

At the April 27 dispositional hearing, the juvenile court declared E. a dependent of the court and removed him from Mother’s custody. The court ordered reunification services, but denied Mother unsupervised visitation in light of the mental health assessment.

DISCUSSION

Mother’s sole contention is that the evidence was insufficient to support the juvenile court’s dispositional orders. She maintains that at the time of the dispositional hearing, she had addressed and ameliorated the issues that had brought her case to the Department’s attention. We disagree.

Once the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) At the dispositional hearing, the court may declare the child to be a dependent of the court and must decide where that child will live while under the court’s supervision. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1082.) In this determination, the child’s best interests are paramount. (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.) “The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Under section 361, subdivision (c)(1), before removing a child from a parent’s physical custody, the juvenile court must find by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or

physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody." "A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent.

[Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on *averting harm to the child*. [Citation.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, italics added, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The court has broad discretion to determine a child's best interests when fashioning a disposition order. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) The court may consider a parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.) The juvenile court considers all relevant evidence that refers to the allegations of the petition, and it considers the conditions as they exist at the time of the hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

In reviewing the dispositional orders of the juvenile court, we determine whether any substantial evidence, contradicted or uncontradicted, supports them. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In making this determination, we review the record in the light most favorable to the juvenile court's findings and orders. We draw all reasonable inferences from the evidence to support the findings and orders, and we resolve all conflicts in the evidence and in the reasonable inferences from the evidence in favor of the findings and orders. Issues of fact, weight and credibility are the province of the juvenile court. (*Ibid.*; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) The party challenging the juvenile court's findings or orders has the burden of showing there is no evidence of a sufficiently substantial nature to support them. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Here, Mother stresses that shortly after E.'s detention, she moved out of her filthy apartment into a new, clean apartment that contained adequate food, clean clothing and toys for E. She consistently visited E. and responded to him in a loving and caring manner. She attended parenting counseling and was cooperative with the social worker. Mother argues that at the disposition hearing, the Department dwelled on the slightly "messy" state of her new apartment and on her old mental health reports, which were not the basis of the court's jurisdiction. She contends there was no danger to E.'s physical or emotional health, and he could have been placed with her under a plan of strict supervision by a social worker.

This argument simply ignores the state of the evidence before the court. As the juvenile court explained, Mother's move into a new apartment did not address *why* her previous apartment had deteriorated to such a ghastly condition. And *why*, despite the home's horrendous state, Mother seemed unable to recognize the gravity of it or the dangers created by it. She exposed E. to physical dangers, such as sharp knives, rotten food, and fecal matter, and she failed to provide food or clothing for E. Furthermore, she created dangers having nothing to do with her filthy home. She left E. in the care of a person whose identity she did not know. She allowed E. to escape the apartment and wander into the street while she slept. She had ongoing mental health issues that needed individualized attention. And she worked at all hours and was too tired to provide for E.'s needs. Her poor judgment, her lack of parenting skills, her immaturity, and her lifestyle prevented her from providing a healthy and safe environment for E. In sum, there was overwhelming evidence that E.'s return to Mother's custody would present a substantial danger to E.'s physical health and safety. We have no doubt that the evidence supported the juvenile court's decision to remove E. from Mother's custody.

As for Mother's argument that the juvenile court failed to "state the facts on which the decision to remove the minor is based," as required by section 361, subdivision (d), we conclude it is not reasonably likely that a statement of the court's factual findings

would have favored Mother's custody. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219.) The court obviously believed Mother's issues had not been resolved and it was not safe for E. to live with her or even have unsupervised visits with her. Accordingly, there is no reasonable probability the result would have been different had the court stated its reasons for removal on the record.

DISPOSITION

The juvenile court's order is affirmed.

Kane, J.

WE CONCUR:

Wiseman, Acting P.J.

Levy, J.